

STATE OF MICHIGAN
COURT OF APPEALS

RITA C. FERGUSON,

Petitioner-Appellant,

v

TOWNSHIP OF HAMBURG,

Respondent-Appellee.

UNPUBLISHED

April 13, 2004

No. 243852

Michigan Tax Tribunal

LC No. 00-290495

Before: Hoekstra, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's dismissal, for lack of subject matter jurisdiction, of her appeal from a special assessment that respondent township levied against her property for a sanitary sewer project. We affirm.

Petitioner argues that the special assessment is invalid because she did not receive written notice of the two public hearings before approval of the special assessment roll and that the special assessment was disproportional to the benefit conferred to her property. We conclude that petitioner is entitled to no relief.

In the absence of fraud, review of Tax Tribunal decisions is limited to determining whether the tribunal committed an error of law or adopted a wrong principle. *Danse Corp v City of Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002). The tribunal's factual findings will not be disturbed if they are supported by competent, material, and substantial evidence on the whole record. *Id.* Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. *Dignan v Michigan Public School Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002).

Petitioner asserts that the Tax Tribunal erred in dismissing her case where the township failed to provide to her mandatory notices of the two public hearings concerning the special assessment because such is a jurisdictional defect that voids the special assessment and all subsequent proceedings. In support of her argument, petitioner relies on MCL 211.741 *et seq.*, and MCL 41.721 *et seq.*, and several Michigan cases, most of which precede the enactment of the statutory provisions governing here or that deal with other statutes.

The jurisdiction of the Tax Tribunal is conferred by the Legislature through statute. MCL 205.731; *Nicholson v Birmingham Bd of Review*, 191 Mich App 237, 239; 477 NW2d 492

(1991). The tribunal does not have jurisdiction to consider petitions that are not timely filed. *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW2d 215 (2002). In relevant part, MCL 205.735 provides:

(1) A proceeding before the tribunal is original and independent and is considered de novo. ... For a special assessment dispute, the special assessment must be protested at the hearing held for the purpose of confirming the special assessment roll before the tribunal acquires jurisdiction of the dispute.

(2) The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved. ... In all other matters, *the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 30 days after the final decision, ruling, determination, or order that the petitioner seeks to review* [Emphasis supplied.]

The tribunal commits no legal error when applying the clear and unambiguous language of a statute. *Electronic Data Systems Corp*, *supra* at 545. Special assessments are subject to the thirty-day rule of MCL 205.735(2). *Anderson v Selma Twp*, 95 Mich App 112, 116; 290 NW2d 97 (1980).

Although petitioner asserts that the township did not fulfill the jurisdictional requirements of MCL 205.735 because respondent mailed the notice to her former address and that MCL 41.724a(5) and MCL 211.744 invalidate assessments against properties where property owners were not given notice as required, our review of these statutes further supports the tribunal's decision to dismiss petitioner's case. In MCL 41.724a(5), the Legislature declared that "A special assessment shall not be declared invalid as to any property if the owner or the party in interest of that property *actually received notice*, waived notice, *or paid any part of the assessment*." Virtually identical language appears in subsection (6) of that statute as well as in MCL 211.744.

The evidence before the Tax Tribunal at the time of its decision concerning notice included an affidavit from respondent's engineer in which he states that he met with petitioner and her husband and spoke of the public hearing, her ability to object at that hearing, and her subsequent ability to appeal to the Tax Tribunal. Although petitioner submitted an affidavit in which she denied receiving oral notice of the public hearing, she submitted her affidavit after the tribunal made its decision on her motion for reconsideration; therefore, her affidavit was not before the tribunal at the time it decided the issue. Regardless, petitioner's mortgagee paid the tax bill, including the special assessment, on December 14, 2001. This payment followed petitioner's meeting with a township employee concerning the sewer assessment charges on her 2001 tax bill. The language of petitioner's mortgage agreement specifically authorizes her mortgagee to pay assessments which may attain priority over the mortgage; because unpaid special assessments are unpaid taxes which eventually lead to foreclosure of the property, petitioner's mortgagee was authorized by petitioner to pay the special assessment. MCL 41.730; MCL 211.78k(5), (6). The evidence presented to the Tax Tribunal before its decision concerning notice is that which a reasonable mind would accept as adequate to support a decision that petitioner had received actual notice and had paid a portion of her assessment; therefore, the Tax Tribunal's findings of the same were supported by material, competent, and substantial evidence

in the record. Furthermore, according to the clear language of MCL 211.744 and MCL 41.724a, based on either of these findings, the special assessment to petitioner's property is not invalidated because of lack of notice. See *Douglas Krepps v Eaton Co*, MTT Docket 149552; 1995 WL 811639.

Petitioner also asserts that the special assessment was disproportional to the benefit conferred to her property. However, the Tax Tribunal did not address this issue below. Generally, an issue is not properly preserved if it is not raised before and addressed by the administrative tribunal. See *Town & Country Dodge v Dep't of Treasury*, 420 Mich 226, 228 n1; 362 NW2d 618 (1984); *Alford v Pollution Control Inds of America*, 222 Mich App 693, 699; 565 NW2d 9 (1997). Furthermore, this Court is limited in its review to the record submitted below. MCR 7.210(A). Because the tribunal dismissed petitioner's case based on lack of subject matter jurisdiction, there is insufficient evidence on the record for this Court to consider this issue.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot